

General Information Letter: Illinois resident is subject to tax on federal adjusted gross income earned in Poland, and no credit is allowed for taxes paid to Poland on that income.

May 06, 2003

Dear:

This is in response to your letter dated April 28, 2003, in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

If you would please be so kind as to clarify the treatment of my clients foreign income in respect to Illinois income tax law.

My client Mr. Z received all his income from a foreign source in Poland. This income is reported on Federal form 1040 as other income. He is also receiving credit for tax paid to a foreign country in the amount which totally offsets the tax liability. In respect to federal tax law he is not liable for any tax because he paid his tax liability in Poland.

The law of avoiding double taxation is working in respect to federal law in this situation, even though his income is shown as adjusted income on Federal form 1040. However, the same amount of adjusted gross income is subject to state tax after the "exemptions deductions."

Is there a possibility to offset his state tax exposure by foreign tax paid or any other deductions?

What does Illinois say in regards to double taxation in regards to USA and Poland?

The starting point for determining Illinois net income is federal adjusted gross income (AGI). Ill. Inc. Tax Act (IITA) Sec. 203(a)(1). If a taxpayer has positive federal AGI, (s)he will have Illinois net income subject to tax unless that amount is exceeded by the total of Illinois exemptions, deductions, and applicable credits. All income received by an Illinois resident is allocable to Illinois for income tax purposes. IITA Sec. 301(a).

Your letter states that your clients are residents of the U.S. Given their Illinois address, we also assume they are Illinois residents for purposes of our response. As Illinois residents, all of the income in question will be taxable in Illinois under IITA Sec. 301(a).

IITA allows a deduction for

{a}n amount equal to all amounts included in ...(AGI)... which are exempt from taxation by this State either by reason of its statutes or Constitution or by reason of the Constitution, treaties or statutes of the United States; provided that, in the case of any statute of this State that exempts income derived from bonds or other obligations from the tax imposed under this Act, the amount exempted shall be interest net of bond premium amortization... IITA Sec. 203(a)(2)(N).

The treaty between the U.S. and Poland exempts most income from U.S. taxation in the case of residents of Poland. According to your correspondence however, your clients are U.S. residents. Therefore, this deduction does not apply. There are no other deductions available to your clients which would reduce their AGI for the purposes of avoiding Illinois income tax simply because the income they received was derived solely from Poland.

Illinois allows a credit to residents for foreign taxes paid under IITA Sec. 601 (b)(3). Regrettably for your clients, for tax years ending on or after 12/31/89, it only covers taxes paid to other states of the U.S., the District of Columbia, the Commonwealth of Puerto Rico, U.S. territories and possessions and their political subdivisions, not taxes paid to foreign nations. IITA Sec. 1501(a)(22). There are no other credits available to taxpayers like your clients simply because their income is solely derived from Poland. Resultantly, they will have net income taxable in Illinois in excess of the 4 exemptions to which they are entitled, and thus will owe Illinois income tax.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax